

# **Office of the County Attorney Performance Plan**

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Leon Rodriguez, Director  
February 27, 2009

## CountyStat Principles

- **Require Data-Driven Performance**
- **Promote Strategic Governance**
- **Increase Government Transparency**
- **Foster a Culture of Accountability**



# Agenda

- **Welcome and Introductions**
- **Impact of Office of the County Attorney on Montgomery County**
- **Office of the County Attorney: At-A-Glance**
- **Hiring Freeze**
- **Headline Measures**
- **Wrap-up and Follow-up Items**



## Meeting Goal

- **Finalize an agreed-upon framework for measuring the performance of the Office of the County Attorney**



## **Contribution to Montgomery Results**

- **A Responsive and Accountable County Government**
- **Affordable Housing in an Inclusive Community**
- **An Effective and Efficient Transportation Network**
- **Children Prepared to Live and Learn**
- **Healthy and Sustainable Communities**
- **Safe Streets and Secure Neighborhoods**
- **A Strong and Vibrant Economy**
- **Vital Living for all of Our Residents**



# Office of the County Attorney At-A-Glance

What OCA Does and for Whom	How Much*
<p><b><u>In General</u></b></p> <p>The Office of the County Attorney provides legal services to County Government, primarily litigation, that promote public safety, health, and welfare and helps County Government carry out its policies and operations in a manner that:</p> <ul style="list-style-type: none"> <li>– minimizes legal and economic risk; and</li> <li>– complies with applicable federal, state, and local regulation</li> </ul>	<ul style="list-style-type: none"> <li>▪ 72.4 WY</li> <li>▪ \$9.44M budget</li> </ul>
<p><b><u>Transactional Support</u></b></p> <ul style="list-style-type: none"> <li>▪ Procurement Contracts -- DGS</li> <li>▪ Memoranda of Understanding and Agreement – All Departments</li> <li>▪ Real Estate Transactions and Condemnations – DOT, DGS, DHCA, DED, CEX</li> </ul>	<ul style="list-style-type: none"> <li>▪ 12 WY</li> <li>▪ \$1.75M budget</li> </ul>
<p><b><u>General Counsel/ Advisory Support</u></b></p> <ul style="list-style-type: none"> <li>▪ Wraparound General Counsel Service -- All County Departments</li> <li>▪ Drafting Legislation/Regulations – All County Departments</li> <li>▪ Advice on County Operations/Policies – All County Departments</li> </ul>	<ul style="list-style-type: none"> <li>▪ 8.7WY</li> <li>▪ \$1.41M budget</li> </ul>
<p><b><u>Internal Support</u></b> – County Attorney</p>	<ul style="list-style-type: none"> <li>▪ 7.7 WY</li> <li>▪ \$700K budget</li> </ul>



\* Approximate values

County Attorney

# Office of the County Attorney At-A-Glance

What OCA Does and for Whom	How Much*
<b><u>Litigation</u></b> <ul style="list-style-type: none"> <li>Represent the Self-Insurance Fund - Liability Cases and Worker's Compensation</li> <li>Commercial Litigation - All County Departments</li> <li>Personnel and Human Resources Including Litigation and Collective Bargaining – OHR and all County Departments</li> <li>Non-personnel Administrative Litigation – All County Departments</li> <li>Child Welfare Litigation – Department of Health and Human Services</li> <li>Public Interest (Affirmative) Litigation <ul style="list-style-type: none"> <li>Code Enforcement – DHCA, DED, DFRS, DPS, PD</li> <li>Debt Collection – Department of Finance</li> <li>Forfeiture – Police Department</li> <li>Subrogation – Risk Management</li> <li>Other Affirmative Litigation – Multiple Departments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>18.15 WY \$2.4M budget</li> <li>1.25 WY \$200K budget</li> <li>4.85 WY \$860K budget</li> <li>0.4 WY \$61K budget</li> <li>9.0 WY \$1M budget</li> <li>10.4 WY \$981K budget</li> </ul>



\* Approximate values

County Attorney

# Hiring Freeze

## ■ Positions

- Two vacancies (Worker's Comp., Self Insurance Fund) have been released from freeze
- Police Department position is currently subject to freeze

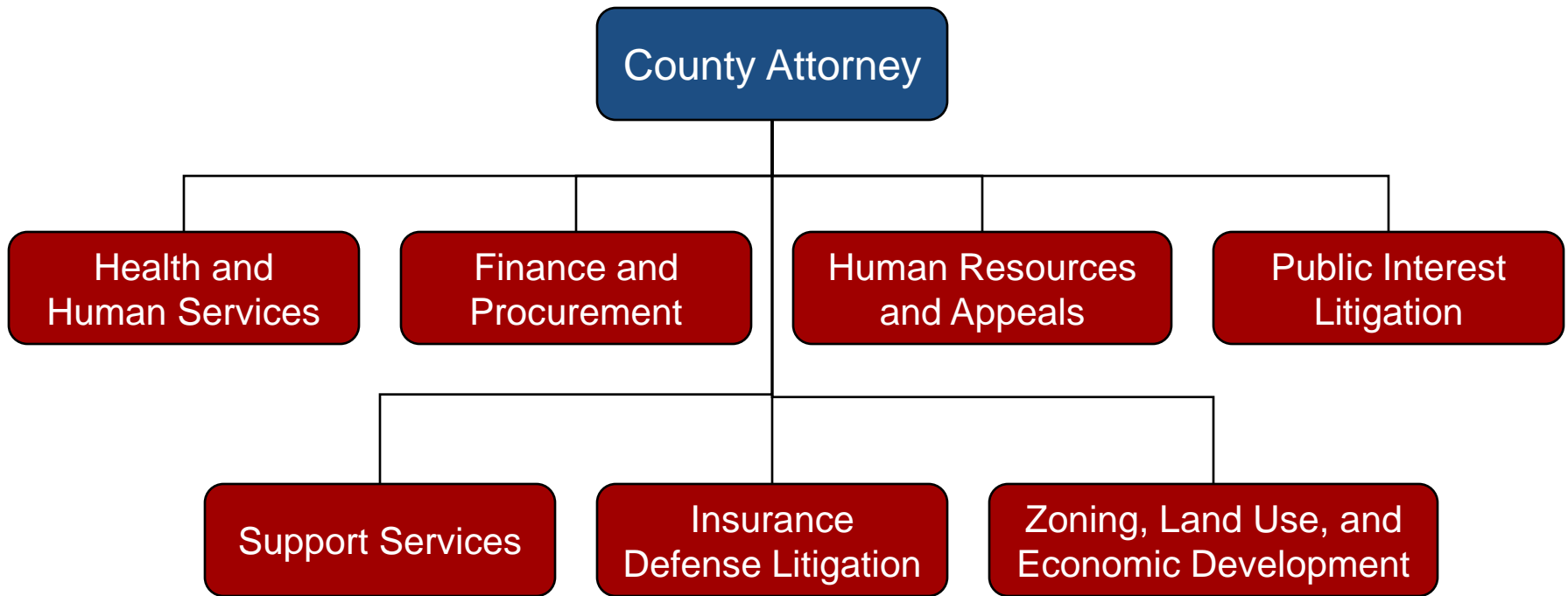
## ■ Impact

- Will need to staff Police Department with multiple attorneys where previously staffed by one
- Personnel expansion goals are being tabled for now





# Organizational Structure



76 positions, 42.8 WYs



# Proposed Headline Measures

## Economic outcomes

1. Self-insurance fund litigation – Variance between County offered settlement and final settlement/judgment
2. Worker's compensation – Cost per \$100 of payroll
3. Debt collection, code enforcement, subrogation, and forfeiture – Variance between amount owed and amount collected  
*(under construction)*

## Litigation outcomes

4. Percent of child welfare litigation cases with a positive outcome  
*(under construction)*
5. Percent of appeals won

## Customer satisfaction

6. Average rating from Internal Customer Satisfaction Survey

## Liability analysis

7. Qualitative analysis of unforeseen or preventable events of liability  
*(under construction)*



## Existing Headline Measures

- 1. Aggregate economic outcome**
  - a. Self-insurance fund litigation
  - b. Workers compensation matters
  - c. Debt collection, code enforcement, subrogation, and forfeiture
- 2. Volume and outcomes of child welfare litigation**
  - a. Children in need of assistance
  - b. Termination of parental rights
  - c. Adoptions
- 3. Index of customer satisfaction in general**
- 4. Index of customer satisfaction as to timely completion of projects**
- 5. Appeals outcomes**
- 6. Qualitative analysis of unforeseen or preventable events of liability (*under construction*)**

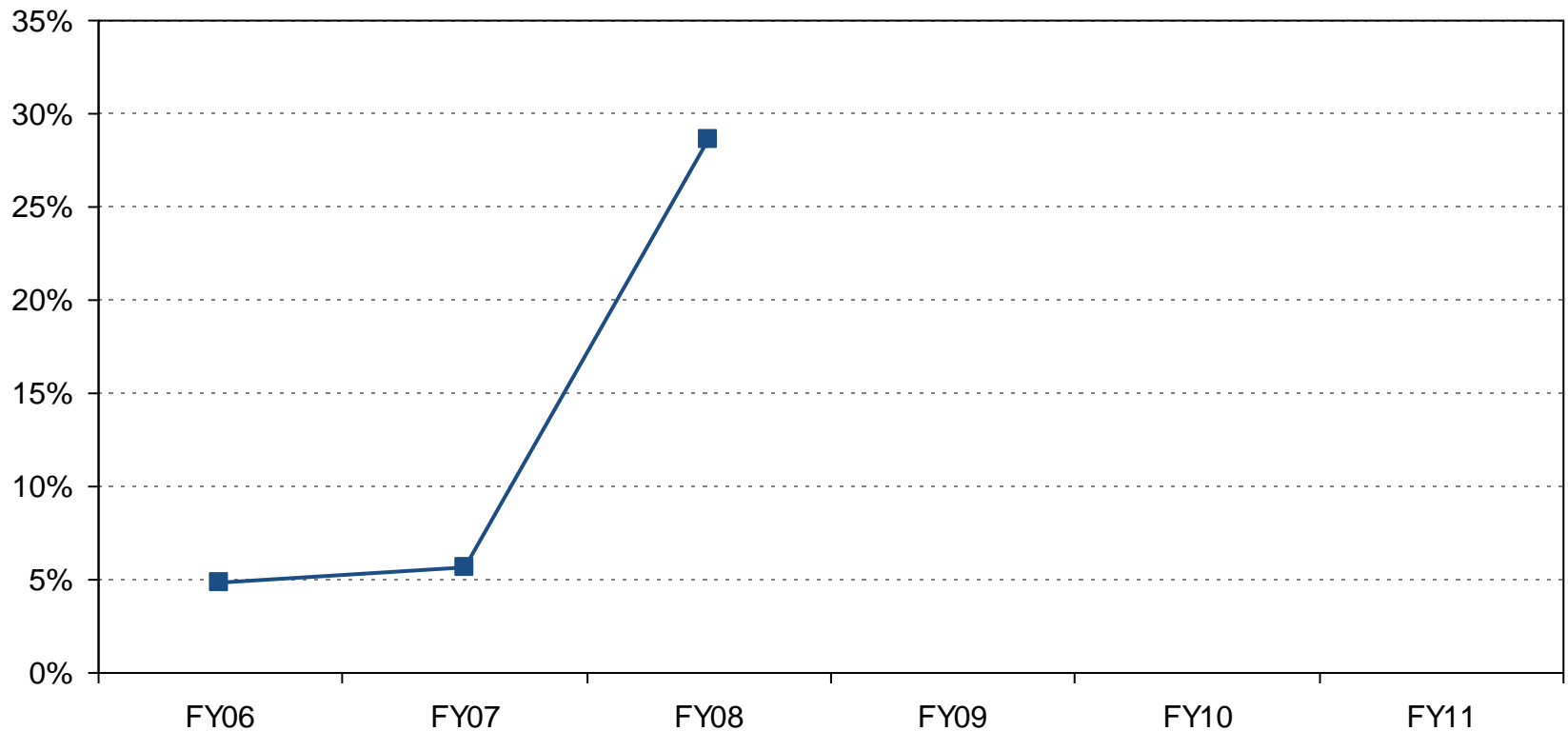


## Relationship of Measures to OCA Functions

Function	Measure #						
	1	2	3	4	5	6	7
Self-Insurance Litigation	X	X	X		X	X	X
Commercial Litigation	X		X		X	X	X
Personnel and Human Resources -- Advisory, Litigation, Collective Bargaining					X	X	X
Non-Personnel Administrative Litigation					X	X	X
Child Welfare Litigation				X	X	X	
Public Interest Litigation	X		X		X	X	
Transactional Support	X		X		X	X	X
General Counsel/Advisory Support					X	X	X



# Measure 1: Self-Insurance Litigation – Variance Between County Offered Settlement and Final Settlement/Judgment



# Measure 1: Self-Insurance Litigation – Variance Between County Offered Settlement and Final Settlement/Judgment

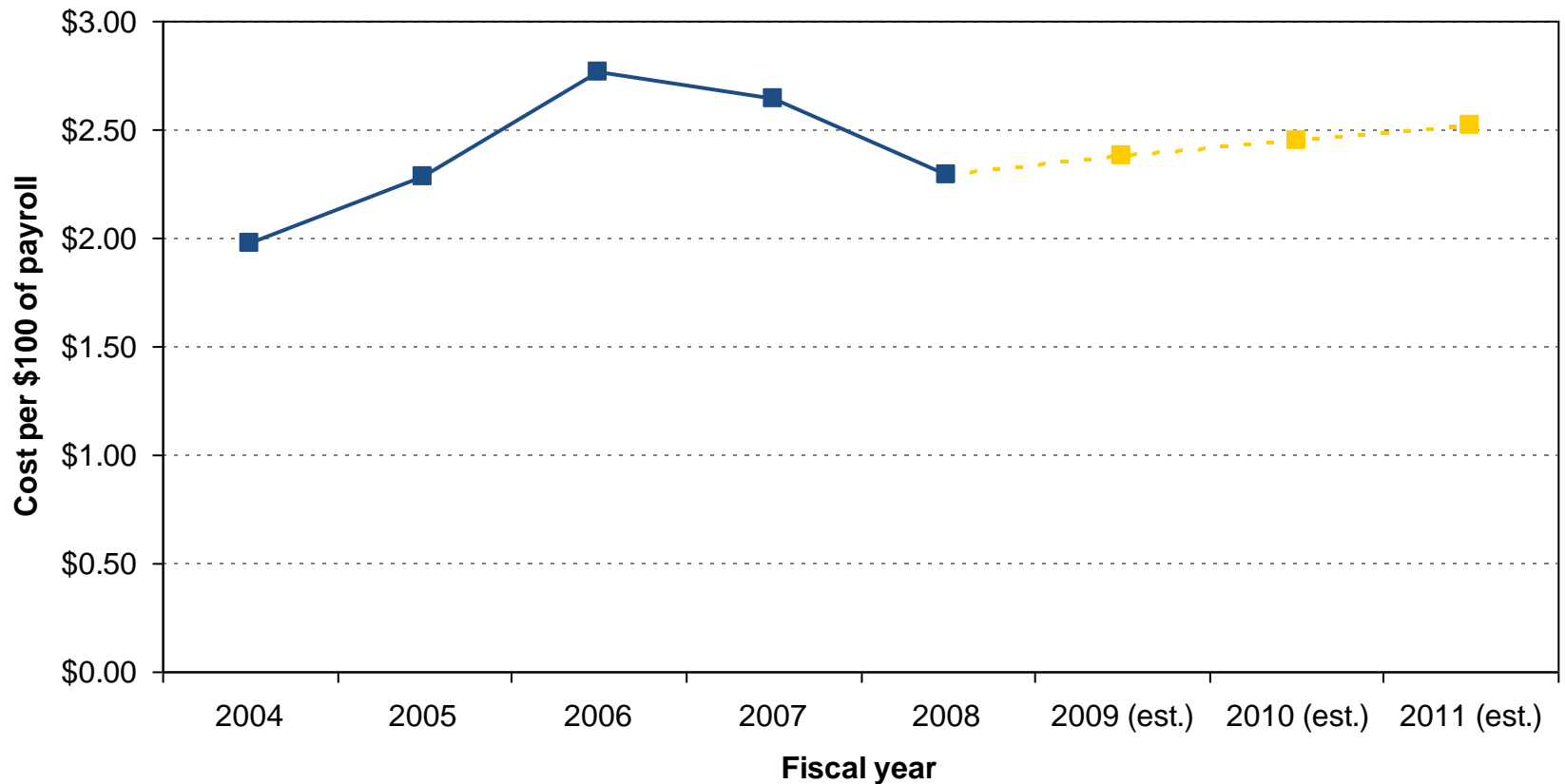
Comparison of settlements offered and amounts paid

	FY06	FY07	FY08
<b>Last settlement amount offered by plaintiff</b>	\$147,472,393	\$157,456,145	\$526,357,993
<b>Last settlement amount offered by County</b>	\$821,082	\$5,930,954	\$1,272,850
<b>Total settlements paid</b>	\$813,773	\$6,222,627*	\$1,577,413
<b>Total judgments paid</b>	\$46,579	\$38,904	\$56,896
<b>Total Settlements + Judgments Paid</b>	<b>\$860,532</b>	<b>\$6,261,531</b>	<b>\$1,636,309</b>

\* This aberrationally high settlement amount corresponds to a single civil rights case (in which Local Government Tort Liability limits do not apply) where the settlement was for several million dollars.



## Measure 2: Worker's Compensation Cost Per \$100 of Payroll



## **Measure 3: Debt Collection, Subrogation, Code Enforcement, Forfeitures – Variance Between Amount Owed/Sought and Amount Collected**

- **OCA will track how much is either owed or demanded in each of debt collection, subrogation, code enforcement and forfeitures, and how much is actually collected and will report the difference for each category**
- **In code enforcement, OCA will over time move toward tracking compliance by cited parties, in addition to tracking amounts collected.**

This measure is under construction.





## Measure 3: Debt Collection, Subrogation, Code Enforcement, Forfeitures – Variance Between Amount Owed/Sought and Amount Collected

Amounts collected

	FY06	FY07	FY08
<b>Debt Collection</b>	\$12,298,896	\$8,161,451	\$23,799,532
<b>Subrogation</b>	\$206,220	\$133,091	\$88,165
<b>Code Enforcement</b>	\$515,083	\$580,961	\$399,451
<b>Forfeitures</b>	\$0	\$0	\$45,825
<b>Totals</b>	<b>\$13,020,198</b>	<b>\$8,875,504</b>	<b>\$24,332,972</b>



## Measures 1, 2, and 3: Economic Outcomes

### What constitutes good performance for these measures?

- Without compromising the County's responsibility and commitment to appropriately compensates those who are injured, and to adhere to the law in its affirmative litigation practices, County Attorney litigation activities will display a stable or downward trend in defensive litigation and a stable or upward trend in affirmative litigation areas

### Contributing Factors

- OCA hires and retain high-quality attorneys
- OCA provides on-going training to attorneys
- OCA coordinates closely with client departments
- OCA's approach to settlement avoids costs of litigation and bad outcome risks
- Very experienced and efficient Debt Collection Unit
- OCA attorneys are highly respected in bench and bar



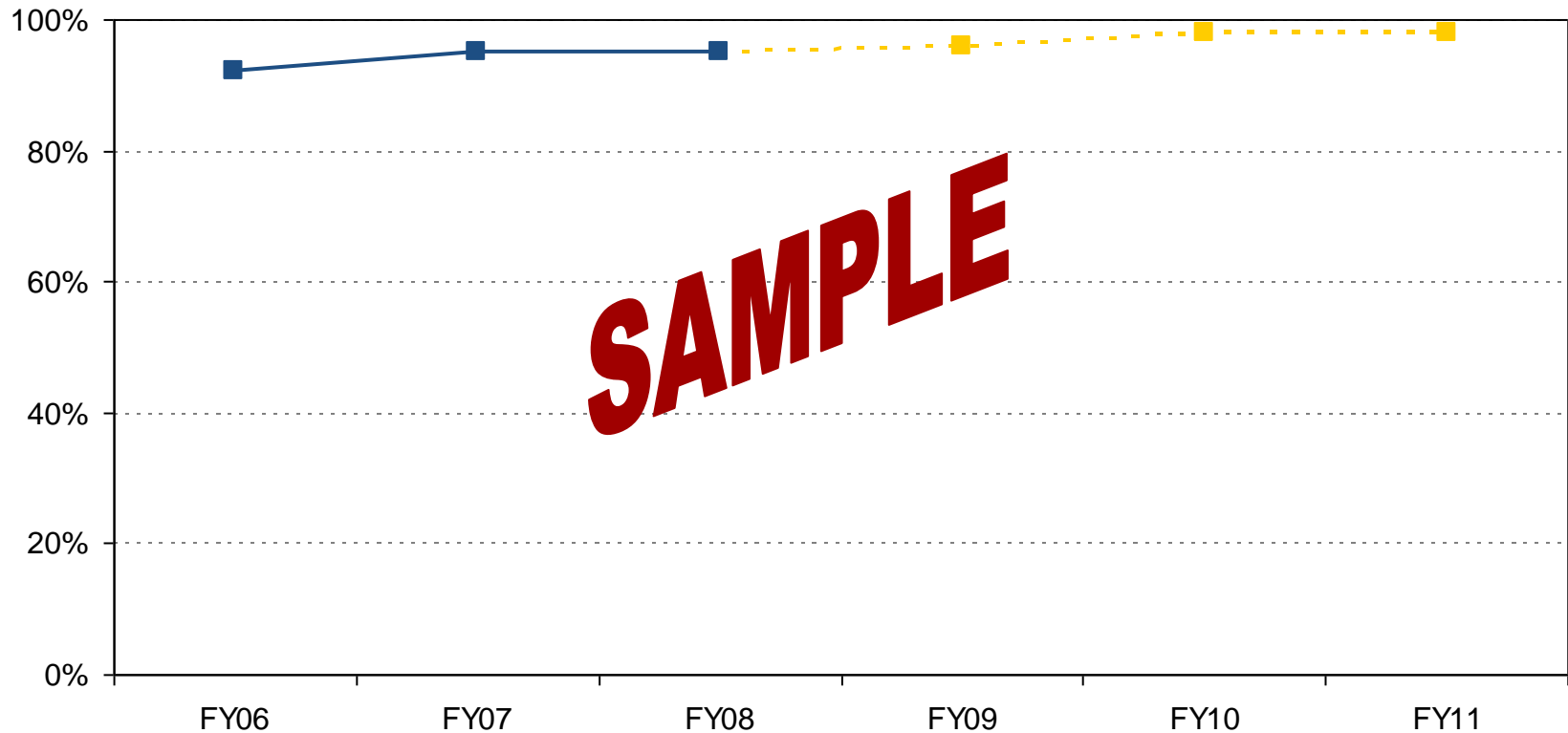
## Measures 1, 2, and 3: Economic Outcomes

### Restricting Factors

- Forfeiture -- Need for further strategic thinking and coordination with Police Department to maximize appropriate forfeiture opportunities.
- Code Enforcement – Exploding caseload
- Worker's Compensation Issues
  - Legislative presumptions increase compensation
  - Fraud
  - Procedural rules and practices that may disadvantage County in litigation



## Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome



Data is under construction, but the County very rarely loses any of these cases. The role of the Office of the County Attorney is to validate the social worker's judgment in court proceedings.



## Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome

Workload of child welfare litigation

Action – Child Welfare Services/ Juvenile Court	FY05	FY06	FY07	FY08
Number of Children in Need of Assistance (CINA) or Guardianship Hearings	1,845	1,659	1,712	2,284
Number of New CINA Petitions Filed	334	249	276	255
Number of CINA Cases Closed	317	260	267	234
Number of New Termination of Parental Rights (TPR) Petitions Filed	33	30	44	59
Number of TPRs Granted	37	20	16	71
Number of New Adoption Petitions Filed	31	15	23	16
Number of Adoptions Granted	30	10	21	22



## **Measure 4: Percent of Child Welfare Litigation Cases with a Positive Outcome**

### **What constitutes good performance for this measure?**

- All but a very small number of CINA and TPR petitions will be granted.

### **Contributing Factors**

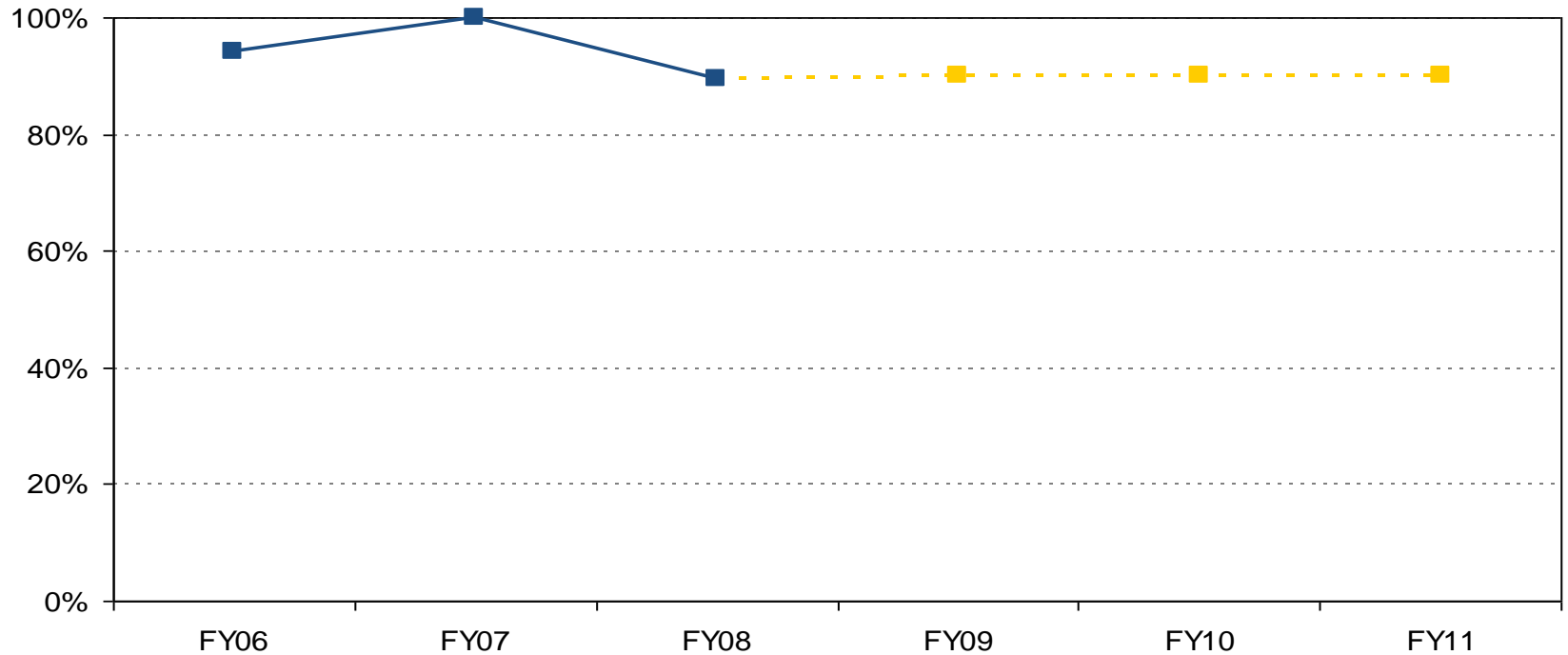
- High-quality OCA staff and high-quality corps of contract attorneys
- Excellent coordination with client agency
- OCA attorneys highly-respected by bench and bar

### **Restricting Factors**

- OCA lawyers assigned to Child Welfare case also handle HHS general counsel matters, placing considerable pressure on our ability to handle both missions.
- Growing caseload in difficult economic times may challenge OCA's ability to maintain its high-level of litigation success in this area



## Measure 5: Percent of Appeals Won



	FY06	FY07	FY08
<b>Appeals won</b>	16	15	17
<b>Appeals lost</b>	1	0	2



## Measure 5: Percent of Appeals Won

### What constitutes good performance for this measure?

OCA will have a high measure of success in appeals, which evidences sound legal advice and positions taken during trial

### Contributing Factors

- High-level of experience among attorneys at all levels of practice
- Legal positions are carefully researched and thought through
- OCA lawyers highly respected by bench and bar

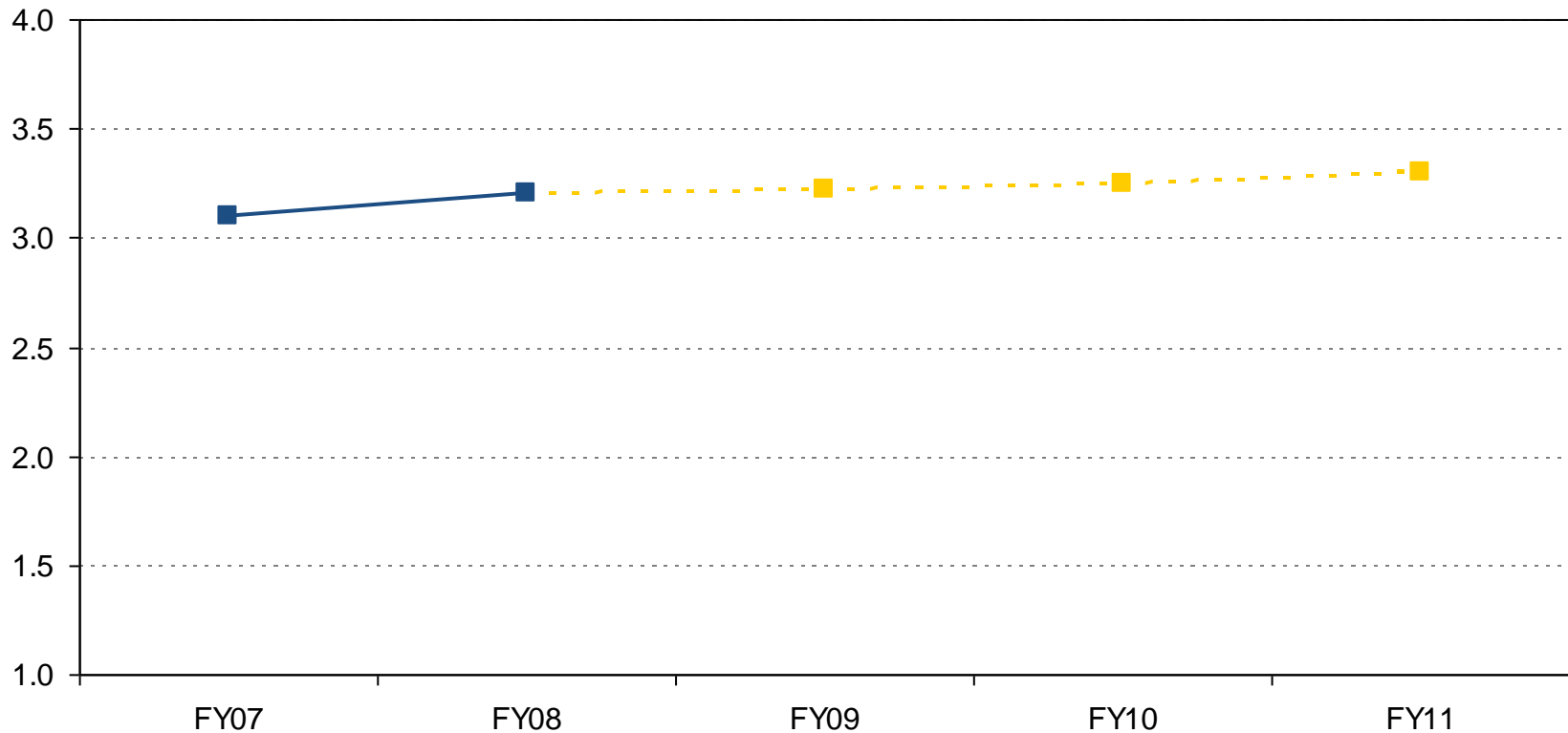
### Restricting Factors

■





## Measure 6: Average Rating from Internal Customer Satisfaction Survey



This is the average rating received by the Office of the County Attorney across all twelve questions of the annual Internal Survey.



## Measure 6: Average Rating from Internal Customer Satisfaction Survey

### What constitutes good performance for this measure?

- A high proportion of internal clients will rate their satisfaction with our responsiveness and the quality of our legal work product at the level of “very satisfied.”

### Contributing Factors

- OCA has a strongly-embedded culture of responsiveness and client support
- Responsiveness to clients is viewed as an important performance measure by OCA supervisors
- Senior managers are also involved in facilitating the client relationship
- General counsel plan seeks to further strengthen client relationships
- Many of our internal clients understand the role of the lawyer and the importance of risk minimization and accept the importance of our mission
- Timeliness of service is given significant weight in performance evaluations
- OCA management will intervene where timeliness issues arise
- High-level of professionalism and commitment from OCA staff at all levels.
- Internal clients generally understand our process



# Measure 6: Average Rating from Internal Customer Satisfaction Survey

## Restricting Factors

- Isolated pockets of bad customer service
  - Failure to return telephone calls
  - Inadequate explanation of legal positions
  - Failure to offer alternatives
- Isolated pockets of inadequate preparation
  - Legal advice based on impression of the law rather than understanding of the law
- Lawyer client communication failures
- Inadequate understanding of OCA's role and the importance of preventing financial risk and non-compliance with the law
- Diminishing budgets mean inability to grow legal staff as caseloads continue to grow
- Occasional failure to keep client leads to perception of untimeliness
- Crushing caseloads



## **Measure 7: Qualitative Analysis of Unforeseen or Preventable Events of Liability**

- A qualitative (non-quantitative) and confidential criterion
- Rarely involves more than one or two events each year
- However, provides critical opportunity for evaluating process of rendering legal advice



## Measure 7: Qualitative Analysis of Unforeseen or Preventable Events of Liability

### What constitutes good performance for this measure?

- This measure is used as a way to examine significant adverse legal events (e.g. – major lawsuits, external findings of non-compliance), and to evaluate self-critically the role that the giving and receiving of legal advice played or did not play in the adverse legal event
- Under this criteria, our goal is ensure that to the extent possible we identify legal risks associated with County policy and operations, and that we either prevent those risks or make a thoughtful decision to undertake the risks

### Contributing Factors

- OCA's culture favors giving conservative legal advice, where compliance or economic risk is presented
- Internal clients are generally receptive when significant legal risks are identified

### Restricting Factors

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## Tracking Our Progress

- **Meeting Goal: Finalize an agreed-upon framework for measuring the performance of the Office of the County Attorney**
- **How will we measure success**
  - Performance plan is finalized and published to the web
  - County Attorney begins reporting quarterly data to the dashboard system



## Wrap-Up

- **Follow-Up Items**
- **Performance Plan Updating**

